

Please note: These transcripts are not individually reviewed and approved for accuracy.

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
EXCERPT OF BOARD MEETING

ITEM 3

CONSIDERATION OF APPROVAL OF SELECTED COSTS INCURRED BY
THE DEPARTMENT OF TOXICS SUBSTANCES CONTROL IN RESPONDING
TO THE WESTLEY TIRE FIRE AND SUBSEQUENT SITE REMEDIATION

GLENDALE CIVIC AUDITORIUM
1401 NORTH VERDUGO ROAD
GLENDALE, CALIFORNIA

TUESDAY, MARCH 20, 2001

9:40 A.M.

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Certified Shorthand Reporter
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

BOARD MEMBERS PRESENT:

LINDA MOULTON-PATTERSON, Chair
DAN EATON
STEVEN R. JONES
JOSE MEDINA
MICHAEL PAPARIAN
DAVID A. ROBERTI

STAFF PRESENT:

BONNIE BRUCE, Interim Executive Director
KARIN FISH, Chief Deputy Director
KATHRYN TOBIAS, Chief Legal Counsel
MARK LEARY, Deputy Director
YVONNE VILLA, Board Secretary
DEBORAH MCKEE, Administrative Assistant

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1 P R O C E E D I N G S

2 --oOo--

3 BOARD CHAIR MOULTON-PATTERSON: Okay. Mr.
4 Leary, not through yet. Onto item number three.

5 MR. LEARY: Madam Chair, members of the Board,
6 Mark Leary again, Special Waste Division.

7 Agenda item three is consideration of approval
8 of selected costs incurred by the Department of Toxics
9 Substances Control in responding to the Westley tire fire
10 and subsequent tire fire remediation.

11 Agenda item three is a follow-on to agenda item
12 number fourteen from the December Board meeting whereby
13 the Board allocated, among other money and purposes,
14 558,000 for the reimbursement to the Department of Toxics
15 Substances Control and the Regional Water Quality Control
16 Board for costs incurred in responding to the Westley
17 tire fire cleanup.

18 As we received the summary of costs incurred
19 and/or obligated by the department, but have not from the
20 Regional Board, this item presents for your consideration
21 a summary of those costs from DTSC only.

22 This item is for consideration of costs only, it
23 is not an award or a reimbursement. Should the Board
24 approve costs today, the contract for reimbursement will
25 be prepared by staff for Board consideration next month.

1 Today's item is analogous to a Board approval of
2 a scope of work prior to the approval of an award or a
3 contract.

4 As described in the agenda item, DTSC's costs
5 can be broken down into two major areas: Those
6 associated with the emergency response, that is those
7 that occurred before the fire was extinguished.

8 And secondly, those costs that resulted from the
9 remediation efforts after the fire was extinguished.

10 This breakdown is provided in the table on page
11 3-3. These costs are further split within that table
12 between staff costs, including overhead and contract
13 costs, extra costs. The grand total of all costs is
14 \$1,461,139.72.

15 A subset of these costs is identified in the
16 table on page 3-2. These costs are those that have been
17 processed and paid to date by the department. This total
18 is \$330,000, \$330,942.69.

19 Although the bulk of the expenses transmitted to
20 the Board have not been processed for payment, it appears
21 likely that they will be paid before the end of the
22 year. At any rate, as they are entirely external
23 contractor costs and the monies are obligated in task
24 orders, these monies are not available to the department
25 for any other purpose.

1 Attachments one and two provide further detail
2 on these costs. It's hard not to notice the significant
3 overhead rate identified in the invoices provided by DTSC
4 and summarized in these attachments. Board staff
5 understand that these rates can be explained and, in
6 fact, are necessary, but have not pursued this
7 explanation feeling that it was more appropriate for the
8 department to explain the necessity of these rates if the
9 Board so wishes.

10 The Board has several options in considering
11 these expenses while reviewing -- while remaining within
12 the current fiscal year allocation of \$558,000.

13 The Board may approve costs in excess of
14 \$558,000 and instruct staff to defer those costs beyond
15 the 558 for consideration by the Board at a future tire
16 fund allocation.

17 Secondly, the Board may approve exactly the
18 \$558,000 and defer consideration of costs until some
19 later date.

20 Thirdly, the Board may approve some amount of
21 costs less than \$558,000.

22 Or the Board may not approve any costs.

23 Mr. Ed Lawry, the director of the Department of
24 Toxics Substances Control is present here today, and I
25 understand is available for questions.

1 That concludes my presentation.

2 BOARD CHAIR MOULTON-PATTERSON: Okay, thank
3 you. We have one public speaker besides Mr. Lawry, would
4 you like to hear from -- did you want to speak at this
5 point, Mr. Lawry, or would you rather wait until there's
6 questions?

7 MR. LAWRY: It's up to you.

8 BOARD CHAIR MOULTON-PATTERSON: Okay. We'll
9 take Elizabeth Mann.

10 MS. MANN: I apologize, I have no questions,
11 thank you.

12 BOARD CHAIR MOULTON-PATTERSON: I'm sorry, I
13 can't hear you.

14 MS. MANN: I have no questions.

15 BOARD CHAIR MOULTON-PATTERSON: Okay. Thank
16 you. Board members?

17 Mr. Lawry.

18 MR. LAWRY: Good afternoon and thank you for
19 inviting me to your meeting again. I must say I enjoyed
20 being in Glendale watching a very exciting inning between
21 Glendale Junior College and Citrus College over lunch.

22 Let me start by addressing the three hundred and
23 something thousand which was justified by our invoices as
24 having been paid about a month ago. That number,
25 according to my staff notes, is now \$807,759 which has

1 been billed and approved as of invoices from our
2 contractor work. That's about 68 percent of the cost
3 which had been contractually obligated.

4 BOARD MEMBER PAPARIAN: I couldn't understand
5 the number, what is the total again?

6 MR. LAWRY: All right. Let's see if I can work
7 this. The total cost which has been billed and approved
8 as invoices from contractors, \$807,759. And that's 68
9 percent of the costs which have been contractually
10 obligated.

11 I know there have been some questions about our
12 overhead rate which is in the neighborhood of 170
13 percent, more or less. Let me give you a little
14 background on that little historical reference as well.

15 We are obligated to seek and recover all of our
16 costs in actions like this where we either oversee the
17 cleanup of a hazardous waste site or contract for that
18 cleanup. I believe that we are, perhaps, the only entity
19 within the State of California which is required by law
20 to recover all of our costs in that manner.

21 And one way, and certainly not the only way to
22 figure out what all the costs are of the department, is
23 to bill absolutely everything directly.

24 Another way to do it, which is what we do, is to
25 take the direct labor costs of people who are working on

1 the project, and then allocate the rest of the costs of
2 the department to those labor costs.

3 That would mean, for example, that rent on the,
4 on our various offices, our regional office at Cording
5 Way, the Cal EPA building, the Glendale, we have a
6 Glendale office, would be part of indirect costs, but
7 they are costs which support the program. And there are,
8 I believe, three indirect rates which relate to our
9 various programs.

10 One is our seg mitigation program which is at
11 issue here; another is the hazardous waste management
12 program; and our science pollution technology program
13 also has an indirect rate.

14 Now in 1993, I believe, perhaps 1994, there were
15 questions raised about whether the indirect rate was
16 appropriate. And Governor Wilson at that time appointed
17 a group of people which included members of the
18 department, one or more accounting firms, and members of
19 the regulated community to examine those costs and
20 determine whether or not they were appropriate. They did
21 that and issued a report in 1995.

22 And one of the things which is required to be
23 done with those indirect costs now is for them to be
24 evaluated and set twice a year. And that's why you have
25 two indirect rates, I believe, in this case. Those

1 indirect rates are reviewed and approved by the
2 Department of Finance when we submit them to them.

3 For what it's worth, there is a general
4 consensus that were other agencies which were performing,
5 which do perform environmental oversight work, to put in
6 all of their indirect costs, you would see rates within
7 this magnitude as what we have here.

8 One other indirect rate which I can't help but
9 mention here is I'm part of the indirect overhead. So my
10 time coming down here ultimately goes in the indirect
11 overhead for each of the three programs.

12 And I think that's pretty much all I wanted to
13 say in introduction. And if anyone has questions I'd be
14 more than happy to answer them if I can.

15 BOARD CHAIR MOULTON-PATTERSON: Okay.
16 Questions, Board members?

17 BOARD MEMBER EATON: Mr. Lawry.

18 BOARD CHAIR MOULTON-PATTERSON: Mr. Eaton.

19 BOARD MEMBER EATON: Have you ever billed any
20 other agency?

21 MR. LAWRY: We have billed the, I believe,
22 Caltrans, Department of Education, Department of Water
23 Resources, Department of Corrections. We've had
24 interagency agreements with each of those, these agencies
25 which include our overhead rate.

1 BOARD MEMBER EATON: Correct. But at the
2 current time there is no interagency agreement nor has
3 there ever been an interagency agreement with the
4 California Waste Management Board on this particular
5 site?

6 MR. LAWRY: I believe you're correct.

7 BOARD MEMBER EATON: Okay. So we have no
8 contract at this time?

9 MR. LAWRY: We do not have an interagency
10 memorandum which has been signed at this time.

11 BOARD MEMBER EATON: Which, I'm unfamiliar with
12 that, so --

13 Mr. Leary, do you have a memorandum of
14 understanding?

15 MR. LAWRY: You do not.

16 MR. LEARY: We do not.

17 BOARD MEMBER EATON: So there is no document?

18 MR. LEARY: No.

19 BOARD MEMBER EATON: So that the monies that you
20 would be seeking here reimbursable, what I'm trying to
21 get at is under the contract that you have with Caltrans
22 and some of the other agencies, in there is the agreement
23 to pay the indirect overhead?

24 MR. LAWRY: I believe so.

25 BOARD MEMBER EATON: Right.

1 MR. LAWRY: Consist with our requirement --

2 BOARD MEMBER EATON: Right.

3 MR. LAWRY: -- that we get reimbursed for all of
4 our costs.

5 BOARD MEMBER EATON: See, as you well know, you
6 and I have gone round and round on this, and --

7 MR. LAWRY: Well I'm not sure it's a complete
8 circle yet, but there have been discussions, yes.

9 BOARD MEMBER EATON: What I can't quite
10 understand is that, which of these costs, had there have
11 been no tire fund and had there have been no legislation
12 of 876, under what statute could you have sought remedy
13 from this Board for those funds?

14 Because my understanding is -- which of these
15 costs were in your ordinary course and scope of your
16 agency's mission, and which of these costs were outside
17 of that?

18 And that's what I'm trying to determine here in
19 my own mind because that is critical. It is critical
20 because you are funded, as we are funded, as every other
21 state agency or governmental agency is funded based upon
22 our own mission statements, our own responsibility to
23 duties, so on and so forth.

24 And what I've had a hard time finding is what
25 would you have done in the ordinary course and scope of

1 your activities at the Westley site that were over and
2 above your regular duties and obligations under the
3 statutes of the State of California?

4 MR. LAWRY: Well it's difficult to answer,
5 that's obviously a hypothetical question, but let me try
6 to get it in this way.

7 I think that everything we did there is within
8 our statutory obligation and authority. Where it gets
9 tricky, I think, is we were indeed asked by the secretary
10 and by your department of -- or Board, excuse me, to be a
11 part of a multimedia effort to address this fire.

12 So the answer is nothing, in terms of would we
13 have done something, there's nothing outside of what we
14 are required and obligated to do.

15 On the other hand, we did it in cooperation with
16 and at the request of, among others, your Board.

17 BOARD MEMBER ROBERTI: Madam Chair.

18 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

19 BOARD MEMBER ROBERTI: I have a question.
20 Didn't we vote on this two months ago, and aren't we just
21 having action pending invoices? And what I'm tending to
22 hear now is a whole repeat of the agenda item. If we do
23 this we're going to be here until Sunday.

24 BOARD MEMBER EATON: With all due respect,
25 Senator --

1 BOARD MEMBER ROBERTI: And I mean it
2 respectfully but I -- okay, now with all due respect,
3 what were you going to say?

4 BOARD MEMBER EATON: What the issue is is that
5 if you, and I've got the transcript right here if you'd
6 like for me to read it.

7 BOARD MEMBER ROBERTI: Yeah, sure.

8 BOARD MEMBER EATON: The actual issue is whether
9 or not the costs were reimbursable under Senate Bill
10 876. That was the issue to be determined legally. And
11 we determined that it was not. That was what was
12 supposed to be brought forward.

13 MR. LAWRY: I may have been at a different
14 meeting.

15 BOARD MEMBER EATON: And if that were to be the
16 case, according to the transcript we were supposed to
17 have that material in hand as Board members ten days
18 before the Board meeting, neither of which occurred.
19 That was the motion.

20 BOARD MEMBER ROBERTI: I thought that was on
21 what was left over on the old money. The figure we had
22 arrived at, splitting that in some way, was \$558,000, and
23 we were waiting on invoices to make sure that the
24 invoices were consistent with what our obligations,
25 rights, and responsibilities are.

1 BOARD MEMBER EATON: So are you agreeing that
2 the Senate Bill 876 monies are not available for
3 reimbursement to the Department of Toxics?

4 BOARD MEMBER ROBERTI: Are you asking me the
5 question?

6 BOARD MEMBER EATON: Yeah, because if that's the
7 case then they can't --

8 BOARD MEMBER ROBERTI: No, I'm not agreeing to
9 that, but I am saying that that is, that is something
10 that can be pending while we discuss, while we take
11 action on the \$558,000 that was the old money.

12 BOARD MEMBER EATON: Correct. And you know I
13 never challenge the fact of the old money, the 558, that
14 any monies had to come from that.

15 But Mr. Leary talked, in his opening statement,
16 about the fact, whether or not the Board wanted to then
17 put the remainder of the monies that were billed or
18 invoiced here for future consideration under SB 876.
19 That brings 876 into play.

20 And I'm saying that 876, SB 876 monies are not
21 available now or in the future for activities that took
22 place prior to the enactment of SB 876. And that is
23 correct, and that is what I understand to be the legal
24 opinion.

25 Having said that then, you're right, we have

1 558,000 available, and out of that we have to look at
2 what expenses the Department of Toxics has presented to
3 us, and whether or not in those costs there are any that
4 we disagree with, question, want to put to the side, go
5 forward with.

6 BOARD MEMBER ROBERTI: And the number of
7 expenses that you have come up, I believe, are somewhere
8 in the vicinity of \$800,000?

9 MR. LAWRY: We have \$800,000 in invoiced
10 contracts which have been approved. We have encumbered,
11 to use a word in a, a technical word in a somewhat
12 non-technical sense, about \$1.4 million. The 800,000 you
13 talked about does not include any direct employee labor
14 or overhead.

15 BOARD MEMBER ROBERTI: Madam Chair, if it is in
16 order, I would like to formalize our vote of two months
17 ago that we make a motion, that I make a motion that we
18 make a payment of \$558,000, and appropriation of the
19 money which I feel we have already encumbered. And then
20 we will discuss the rest of the money and what fund it
21 will come from on another agenda item, later on today,
22 whatever.

23 But I think the issue before us right now is the
24 558, pursuant to action the Board has already taken.
25 This is just a formal appropriation of monies that we

1 have already encumbered, and to unencumber them would
2 take another vote of the Board.

3 BOARD MEMBER EATON: When did we take the vote,
4 Senator Roberti?

5 BOARD MEMBER ROBERTI: I think it was four to
6 two in December.

7 BOARD MEMBER EATON: Well that, that vote right
8 here didn't have anything to do with what you're speaking
9 of with regard to the costs associated here. And we can
10 have a discussion of what the costs are, can we not?

11 BOARD CHAIR MOULTON-PATTERSON: Do we have
12 any --

13 BOARD MEMBER EATON: Within the 558,000?

14 BOARD CHAIR MOULTON-PATTERSON: Do we have any
15 comment from staff?

16 BOARD MEMBER EATON: It may be your position
17 that each and every invoice submitted by the Department
18 of Toxics is okay.

19 BOARD MEMBER ROBERTI: Well I don't know.

20 BOARD MEMBER EATON: That's your position and I
21 understand that position. But I'm just trying to
22 determine what the costs are based upon the fact that
23 we've gotten a summary of the costs, and per your own
24 agreement in the motion, we were supposed to get invoices
25 and an analysis of the Department of Toxics costs ten

1 days before this Board meeting.

2 MR. LAWRY: Right. You got 'em from us,
3 invoices and analysis from us, and we've talked at length
4 with your staff. I don't know what your relationship is
5 with the staff, but we got it all over there.

6 BOARD MEMBER EATON: I'm not criticizing you,
7 Mr. Lawry.

8 BOARD CHAIR MOULTON-PATTERSON: One moment, Mr.
9 Paparian. Did we get the invoices? It was my
10 understanding that we did.

11 Mr. Paparian.

12 BOARD MEMBER PAPARIAN: I think a lot of us have
13 different recollections of what was or wasn't supposed to
14 happen. I wonder if we could hear from our staff, in
15 particular our legal staff, what is is that they think is
16 before us, and what's properly before us to decide.

17 CHIEF LEGAL COUNSEL TOBIAS: I agree that the
18 agenda item correctly states on previous Board action
19 that the Board did adopt this resolution which basically
20 said that the Board was allocating, that the Board was
21 allocating the so-called old money, or money prior to
22 876; that it was coming back to this meeting; and that
23 the Board was going to look at the costs that were in the
24 invoices and decide what they were going to pay.

25 BOARD MEMBER PAPARIAN: I thought we also had a

1 discussion about how some of the, there are, there are
2 some pre-876 monies, pre-876 obligations that are out
3 there that could be spent with 876 money, in particular
4 the Sukut contract in the order of \$2 million which was a
5 several year contract and goes well into the period of
6 876.

7 BOARD MEMBER EATON: Mr. Paparian, I have the
8 transcript here. There's no recollection of that in the
9 transcript.

10 BOARD CHAIR MOULTON-PATTERSON: You know, I
11 would suggest in the future that when we have a meeting
12 that, you know, we're going back, that we all could have
13 that part of the transcript. Because it's really unfair
14 that we don't, we can't all see it, because we're seeming
15 to have a little problem.

16 BOARD MEMBER EATON: I just went and copied it
17 out of the morgue which everyone has the opportunity to
18 do.

19 BOARD CHAIR MOULTON-PATTERSON: Okay. Do you
20 guys all have it down there?

21 CHIEF DEPUTY DIRECTOR FISH: We don't. Would
22 you like us to address the issue of the old money versus
23 the new?

24 BOARD CHAIR MOULTON-PATTERSON: Yes, and I
25 thought that was decided at the December meeting.

1 BOARD MEMBER EATON: And I have granted that
2 that issue has been decided that the only monies that are
3 available are the 558,000.

4 BOARD CHAIR MOULTON-PATTERSON: Okay.

5 BOARD MEMBER EATON: And that any other monies
6 that can be expended from SB 876 can only occur from this
7 day forward for work from this day forward. And Mr.
8 Paparian is disputing that.

9 BOARD MEMBER ROBERTI: And I have a motion on
10 the floor.

11 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti,
12 would you restate your motion?

13 BOARD MEMBER PAPARIAN: I'll second it.

14 BOARD MEMBER ROBERTI: That the \$558,000 from
15 the pre-876 old money, is that correct, be appropriated
16 and transferred to Department of Toxics.

17 BOARD MEMBER PAPARIAN: Second.

18 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.
19 Paparian. We have a motion by Senator Roberti --

20 BOARD MEMBER EATON: And I'll have a substitute
21 motion here, but I would ask the courtesy of Senator
22 Roberti and Mr. Paparian, that you at least grant the
23 courtesy to another Board member. I've never once ever
24 cut either of you off, when I was chair or as a Board
25 member, and I don't appreciate what you're trying to do

1 right now.

2 These are issues here that I think are very,
3 very long range. And perhaps if you either are unwilling
4 or unable to see what's going to take place in the future
5 with regard to other state agencies or other local
6 agencies coming in and trying to reach the cash register
7 for these monies, there's a public policy issue behind
8 this, not just a political decision. And I would ask
9 that you consider that.

10 I understand what the votes are and where
11 they're going to line up, but I would at least think that
12 you would have the courtesy to do that.

13 BOARD CHAIR MOULTON-PATTERSON: You had a
14 substitute motion?

15 BOARD MEMBER MEDINA: Madam Chair, before you
16 get to the substitute motion, I've been waiting to get a
17 question asked, and I haven't had a chance yet to ask my
18 question related to the \$558,000.

19 And as it states on page 3-1 of the agenda, it
20 states that the 558,000 to DTSC and the Regional Water
21 Quality Control Board.

22 And my question is, what are the anticipated
23 costs that will be allocated to the Regional Water
24 Quality Control Board? And are they going to come back
25 and make a claim on the same \$558,000?

1 MR. LEARY: The Board, the Board, I think we
2 represented back on agenda item fourteen in December that
3 there were about \$161,000 to the Regional Water Quality
4 Control Board.

5 We made the Board aware that DTSC had submitted,
6 the Regional Board that is, that DTSC had submitted their
7 invoices, and we welcome and encourage their submittal of
8 invoices for consideration, for the ultimate Board's
9 consideration. We have yet to receive those invoices.
10 So we moved this item forward for DTSC's costs alone.

11 BOARD MEMBER MEDINA: So according to resolution
12 number 2000-487, 558,000 was approved for allocation to
13 DTSC and the Regional Water Quality Board. So if DTSC is
14 awarded the 558,000, what happens again when the Regional
15 Water Quality Control Board comes and makes a claim on
16 that same money?

17 MR. LEARY: Well there wouldn't be any remaining
18 expenditure authority this fiscal year for the payment of
19 those costs. There's a dispute obviously about whether
20 those costs could be considered in future fiscal years.
21 There's a discussion ongoing among you all right now
22 about whether those costs could be considered in future
23 fiscal years.

24 BOARD MEMBER MEDINA: So as of this point the
25 Regional Water Quality Control Board has not made any

1 demands --

2 MR. LEARY: No, they haven't.

3 BOARD MEMBER MEDINA: -- on that five hundred --

4 MR. LEARY: No, they haven't.

5 BOARD MEMBER MEDINA: -- 58,000 dollars?

6 MR. LEARY: No, they have not.

7 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

8 Leary. I want to give Mr. Eaton the courtesy of --

9 BOARD MEMBER EATON: Sure. Mr. Jones wants to
10 talk as well.

11 BOARD CHAIR MOULTON-PATTERSON: Thank you. Mr.
12 Jones.

13 BOARD MEMBER JONES: Thank you, members. I have
14 a couple of questions here, and I appreciate you coming
15 up and/or down, wherever, I don't know, it's all of 3:00
16 o'clock.

17 We have, there's two things from where I'm
18 coming from. One is that in -- and I don't think it's
19 semantics, I think it's important that we get this line
20 drawn in the sand to make sure it's right. I gave my
21 word to Ed Lawry when we were doing 876 that as long as
22 we had contracts we had no problem, and I am going to
23 stay with that forever.

24 The other issue is we have an attorney here from
25 CMS who is part of litigation that we have, or pending

1 litigation that we have at the Westley tire fire site.

2 And I've always looked at those settlement discussions
3 with a whole array, or a whole range of responsible
4 parties as being part of what is going to help fund our
5 reimbursement to different agencies and to ourselves.

6 And I think that clearly has to be part of our
7 discussions, because I in no way want this discussion,
8 which may be between two different agencies within Cal
9 EPA's family, because we do our business in the public
10 setting, we have very strong feelings and need to talk
11 about issues to make sure that they're straight. But,
12 and while I think there are good points on all parts of
13 this issue, I think it's critical to do a couple of
14 things.

15 And one is to make a determination that, in
16 fact, there were two processes, as DTSC has set out.

17 One was the invoices that were for the actual
18 response when the thing was on fire.

19 And the second was the remediation and cleanup
20 or stabilization of that site, which in my view is part
21 of closure and post closure.

22 And that being said, I think we have another
23 pool of money that not only do we have our existing tire
24 money that there was evidently an allocation of 558,000
25 not, I mean there was an allocation, there was a vote,

1 the vote passed four to two. There is yet to be a
2 blessed SB 876 five-year plan, so we're in limbo there.

3 But we have a third pool of money which is the
4 settlements for the closure, post closure of the Westley
5 tire fire site.

6 And I think that, in my view a lot of these
7 expenses that were incurred are part of closure and post
8 closure. And so I think while we have the discussion of
9 what's acceptable and what isn't, I'd like to have the
10 discussion about, there are parts of this discussion that
11 I think need to happen, and there are other parts that
12 could be done in a lot of places.

13 I thought that this agenda item was to see if,
14 in fact, these bills, that we accepted these bills. That
15 we said, DTSC is our sister agency, they're going to bill
16 us. They're not asking us to write them a check today,
17 are they? Somebody?

18 INTERIM EXECUTIVE DIRECTOR BRUCE: I feel if you
19 looked at the agenda item I think it's the anticipation
20 at DTSC that they will be, that 558,000, whatever you all
21 decide and what part of those bills they will be.

22 BOARD MEMBER JONES: Right, the 558 I think has
23 already been voted.

24 INTERIM EXECUTIVE DIRECTOR BRUCE: And I think
25 what we're looking for from the Board is direction on how

1 to craft the contract for the money that was approved on
2 the four to two vote.

3 BOARD MEMBER JONES: And one of the questions,
4 the contact on the four to two vote? The four to two
5 vote was for \$558,000.

6 What I am adding to this discussion, okay, is
7 the fact that there is closure, post closure money in
8 remediation.

9 I'm not going to list it, I'm not going to talk
10 about what it is, everybody knows that there are parties,
11 it's a confidential negotiation right now. But there are
12 dollars available.

13 I want to know if this item, in saying yes, DTSC
14 spent a million, whatever they, whatever they spent, a
15 million something --

16 MR. LAWRY: A million four.

17 BOARD MEMBER ROBERTI: Madam Chair, could I ask
18 the question?

19 BOARD MEMBER JONES: -- that we are
20 acknowledging that that million four is a legitimate
21 expense, but we're not saying that we're going to write
22 you a check tomorrow, and let us work through, if it's
23 acceptable to DTSC and to the other Board members, work
24 through the issue of what portion of this is appropriate
25 to come out of the final settlements for the site, which

1 all gets, all that money gets directed to us in the
2 closure, post closure, and needs to, into the post
3 closure fund, and that money then gets directed by us to
4 closure, post closure activities. These are clearly
5 closure, post closure activities as part of the
6 remediation.

7 So it's a piece of the, of the discussion that I
8 don't think we ever had that needs to be included and may
9 take some of the, may make it a little easier to deal
10 with to get everybody.

11 Because I mean we have a portion of money that's
12 going to come out of this remedia -- these settlements
13 that has to reimburse our programs, as does the Water
14 Board, as does the Air Board, as does Toxic.

15 But pure and simple, I think that that is a way
16 to do this, deal with the 558 any way that anybody wants
17 to, write 'em a check, I don't care.

18 But understand that if we accept this bill and
19 this relationship, we can fund it from other sources.
20 They may not get it right away. They're going to have to
21 wait like we're going to have to wait.

22 But in the future, when SB 876 gets approved by
23 the legislature and everybody, I gave my word, as did
24 others, that we would contract with DTSC, that we would,
25 as the work needs to be done we would get a scope of

1 work, we would determine what was there, get some kind of
2 an estimate, boom, done. I'm going to stand by my word,
3 pure and simple; but those were the discussions.

4 Is that, I mean that's what I told Ed the
5 morning that the bill was going to the, I mean not all
6 this other stuff, but the morning the bill was going to
7 the floor that, in fact, that I gave him my word that we
8 would enter into contracts. Is that fair to say?

9 MR. LAWRY: My recollection is a much shorter
10 conversation, but it is fair to say what you're saying.

11 BOARD MEMBER JONES: It was a short
12 conversation, actually broke out of a staff meeting.

13 MR. LAWRY: That's what I recall. With the
14 Chair's permission I think there probably are two issues;
15 one is 500 some thousand which we've authorized you, and
16 have we given you enough justification for you to write a
17 check tomorrow or whatever timeframe you're talking
18 about?

19 And the remainder is a contract for, pursuant to
20 876 to, for other costs which aren't part of the 558 as
21 you talked about in December.

22 And I think Mr. Eaton and I may have a
23 disagreement as to whether past work could be authorized
24 under 876 pursuant to the contract which is executed
25 tomorrow or not, but I don't know that that's before you

1 today, and I don't know that we have a legal opinion as
2 to how that works.

3 BOARD MEMBER EATON: And I agree one hundred
4 percent with you.

5 BOARD MEMBER ROBERTI: Madam Chair.

6 BOARD MEMBER EATON: What I wanted to be able to
7 do is, I find it very hard that if you have costs before
8 you -- this is not for you, Mr. Lawry.

9 BOARD MEMBER ROBERTI: Madam Chair.

10 BOARD MEMBER EATON: Mr. Roberti, please.

11 BOARD MEMBER ROBERTI: Well it appears that
12 nobody can hear on the right side here, and I have a
13 motion on the floor.

14 BOARD CHAIR MOULTON-PATTERSON: That's right.

15 BOARD MEMBER ROBERTI: And this is being
16 interminably discussed, no intent to cut everybody off,
17 but everyone says the \$558,000 is agreed to, except
18 unfortunately there is no language in our resolution. The
19 resolution is written as if we didn't do anything in
20 December, for reasons I cannot figure out, and it appears
21 that the people who talk the most, with all due respect,
22 are the ones who get the staff's attention.

23 It's unconscionable that a four vote majority of
24 the Board has absolutely no action from the staff except
25 for some blank piece of paper. I would like to know why

1 that is.

2 I have a motion on the floor, we should have a
3 vote.

4 BOARD CHAIR MOULTON-PATTERSON: Okay.

5 BOARD MEMBER ROBERTI: If people don't want to
6 vote for it, that's fine, I won't be upset. I do get
7 upset when a four to two vote of the court, of the, of
8 the, whatever we are, is treated, is treated as a
9 non-item. When everybody else up on the Board agrees
10 that we did make an appropriation. We did.

11 The resolution is pathetic, and it will not
12 match whatever our action was.

13 BOARD MEMBER EATON: For the first time --

14 BOARD MEMBER ROBERTI: So I'm not trying to cut
15 Danny off, Mr. Eaton, I mean he was a great chair, an
16 intelligent man, and feels these issues very strongly.

17 I feel very strongly the issue of process. And
18 we had process in December, it is not being met. The
19 staff resolution is blank, and even though everyone on
20 the Board says we voted on it, we're going to talk and
21 talk and talk.

22 The other money that we're discussing, yes, that
23 is an open question, how we're going to pay it, that's an
24 open question, I agree.

25 But we do need a formal motion on the \$558,000,

1 and there is a motion on the floor.

2 BOARD MEMBER EATON: And I think --

3 BOARD MEMBER ROBERTI: Now Danny, you can talk.

4 BOARD MEMBER EATON: And I think -- well thank
5 you very much, that's very kind. And I don't mean that
6 facetiously.

7 I think we're both in agreement and we're both
8 seeing it from different viewpoints here. My point was
9 basically that we ought to have an analysis of what those
10 invoices were. So I share your view that I have nothing
11 before me, analysis or other before me that gives me what
12 those costs are.

13 So while you're willing to vote for the 558 on
14 blind faith or some other good hope, I'm sitting there
15 and saying I don't understand, there's a NorCal contract
16 within there. We had a contract with NorCal. Is that a
17 different contract than what NorCal did for us, or is it
18 the same contract? There's no analysis of those costs.

19 I agree that we should have been presented with
20 that today and made a determination of what that 558
21 would approve. So from that standpoint I think we're in
22 agreement. The fact is that there's a lack of
23 information.

24 So if you want to, you know, go ahead, and which
25 invoices are you going to pick to make up the 558? That's

1 what they're asking us to do now. And before you made
2 your motion I was trying to get there.

3 BOARD CHAIR MOULTON-PATTERSON: We have a motion
4 by Senator Roberti, seconded by Mr. Paparian.

5 Please call the roll.

6 BOARD MEMBER MEDINA: Could we have a
7 restatement of the motion, please, just to make sure that
8 we're clear on what it is that we're voting for?

9 BOARD MEMBER ROBERTI: We said that we will --
10 the resolution is useless anyway, so we don't have a
11 resolution number to deal with.

12 That we appropriate \$558,000 to pay the
13 Department of Toxics, to pay for a, to pay for invoices
14 rendered for work which the Department of Toxics
15 performed on the Westley tire fire site.

16 That -- and I'm adding this because I believe
17 that it's necessary -- that staff prepare the necessary
18 contractual language for the pre-876 monies that we are
19 appropriating;

20 And that this motion is pursuant to the
21 discussion in December, the vote in December in which we
22 did receive information which this Board takes
23 objectively to indicate that those monies were expended,
24 absent the specific receipts which I grant we do not
25 have. But we do know there's an expenditure of \$800,000,

1 I think it's reasonable to appropriate \$558,000 of that
2 money.

3 I do agree with Mr. Eaton, and on this we share
4 agreement, that I do not think the preparatory work was
5 at all adequate, this resolution is absolutely useless,
6 it is blank, and that's not why we have staff to come up
7 with blanks.

8 BOARD CHAIR MOULTON-PATTERSON: I think we all
9 agree that we could have had it outlined a little
10 better. Thank you.

11 Do you have the motion? Is everybody clear on
12 the motion?

13 Please call the roll.

14 BOARD MEMBER JONES: Madam Chair.

15 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

16 BOARD MEMBER JONES: Just real quickly. On the
17 bottom of this resolution it says to fill in the task
18 that you're approving in the 558 grand or whatever. I
19 would just like you to, if you would amend your motion to
20 include the emergency response costs in that part of the
21 motion, because that is not closure or post closure
22 expense, it is in response to the fire. So you need to
23 do that because if we get it --

24 BOARD MEMBER ROBERTI: I think that's a point
25 well taken, and I will incorporate that.

1 Mr. Lawry, do you have a problem with that?

2 MR. LAWRY: Well the problem I have is that a
3 lot of our contractor costs which we've been billed and
4 approved took place long after the fire started, and if
5 Member Jones is speaking to everything we spent before
6 the last ember was out, I'm not sure how that breaks
7 down. What I do know --

8 BOARD MEMBER ROBERTI: I see your point. I
9 think Mr. Lawry is saying, I think you're defining
10 emergency but that may be very difficult to do.

11 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones wants
12 to clarify.

13 BOARD MEMBER JONES: What I'm trying to say here
14 is we have two attachments, we don't have your bills, I
15 mean I don't have 'em, they have 'em. We have two
16 attachments. One of the attachments is emergency
17 response for like 73 grand. That is not part of closure,
18 post closure.

19 MR. LAWRY: Probably not.

20 BOARD MEMBER JONES: The rest of it is
21 expenditure that is remedial. Remedial is part of the
22 closure, post closure.

23 So I don't care what portion of remedial gets
24 added to that total up to 538 or whatever, but it must
25 include the emergency response because that's

1 appropriate.

2 MR. LAWRY: Capiche, I believe, sir.

3 BOARD MEMBER JONES: Beautiful.

4 BOARD CHAIR MOULTON-PATTERSON: And you agree,
5 Mr. Senator?

6 BOARD MEMBER ROBERTI: Yes.

7 BOARD CHAIR MOULTON-PATTERSON: Please call the
8 roll.

9 BOARD SECRETARY VILLA: Eaton.

10 BOARD MEMBER EATON: No.

11 BOARD SECRETARY VILLA: Jones.

12 BOARD MEMBER JONES: Aye.

13 BOARD SECRETARY VILLA: Medina.

14 BOARD MEMBER MEDINA: Aye.

15 BOARD SECRETARY VILLA: Paparian.

16 BOARD MEMBER PAPARIAN: Aye.

17 BOARD SECRETARY VILLA: Roberti.

18 BOARD MEMBER ROBERTI: Aye.

19 BOARD SECRETARY VILLA: Moulton-Patterson.

20 BOARD CHAIR MOULTON-PATTERSON: Aye. Anything
21 else you need from us?

22 INTERIM EXECUTIVE DIRECTOR BRUCE: Can I just
23 ask one question for clarification? We will be coming
24 back next month with the contract that clarifies what you
25 said. I would just also like to make sure that you have

1 all you need.

2 Attachment one and attachment two provides for
3 you a summary of the invoices that we were provided.
4 Where we had requests from Board offices for the actual
5 copies of the invoices, my understanding is those were
6 provided.

7 What more would you like as we come forward with
8 the contract?

9 BOARD MEMBER PAPARIAN: Madam Chair.

10 BOARD CHAIR MOULTON-PATTERSON: Mr. Paparian.

11 BOARD MEMBER PAPARIAN: I think one of the
12 questions out there is if we wanted to pay for these
13 costs, how do we make that happen? And I did bring up at
14 the prior meeting, and I think Mr. Eaton, you will agree,
15 of the Sukut contract, how much of that money is, is left
16 to be spent over the next couple of years, whether we
17 could go back and backfill with pre-876 money, and then
18 have some of that Sukut money paid for, as I believe,
19 would be appropriate with 876 money.

20 Anyway, the more urgent issue is if we wanted to
21 allocate more money to DTSC for their costs, how could we
22 make that happen?

23 INTERIM EXECUTIVE DIRECTOR BRUCE: I heard that
24 direction. I think the agenda item as we were addressing
25 it was addressing specifically the vote that was taken in

1 December on that 558,000. You're asking for a larger
2 piece that we can come back taking a look at.

3 Hearing what Mr. Jones has said also about some
4 settlement money that would come out of post closure
5 could happen, and we'll have to bring that forward too.

6 But I want to make sure you get enough of the
7 material that we have available, and obviously this
8 wasn't enough.

9 BOARD MEMBER EATON: I would like an analysis of
10 what invoices you're going to pay under the 558,000,
11 because there's obviously, according to Mr. Lawry what
12 has been submitted and what has been paid, that not all
13 of those invoices can be paid with \$558,000 because there
14 is still other invoices over and above that. So which
15 ones are going to be paid with the 558? Right?

16 INTERIM EXECUTIVE DIRECTOR BRUCE: Right.

17 BOARD MEMBER EATON: Which ones are for
18 emergency, which ones for non-emergency? Analysis of the
19 invoices. Which of those contracts with NorCal do we pay
20 for, did they pay for? Are we being double billed?

21 INTERIM EXECUTIVE DIRECTOR BRUCE: Thank you.

22 BOARD MEMBER EATON: That's just a start. And
23 then what separation of those legal costs? I mean in the
24 invoice, it is my understanding, is there are costs for
25 legal action. Is that correct, Mr. Lawry?

1 MR. LAWRY: Lawyers bill time for these costs.

2 BOARD MEMBER EATON: I'm not sure we would be
3 paying their or co-defendants or co-plaintiffs or cross-
4 plaintiffs or cross-defendants costs, as the case may be,
5 that those should be segregated and then the Board should
6 look at those. That's all I was trying to get at.

7 That's the analysis that would have been
8 required for today to avoid a lot of what took place. I
9 do not understand why we're paying for another agency's
10 legal bills.

11 MR. LAWRY: Well we'd like to address you with
12 the information.

13 BOARD CHAIR MOULTON-PATTERSON: Yes, Mr. Lawry.

14 MR. LAWRY: The cost of the work that we do and
15 the cost to get the money is one of the costs that we are
16 obligated by law to collect. As I believe here, I think,
17 I would like to be able to report to my department and
18 give them some direction.

19 It's my understanding we're going to be talking
20 about two contracts; one is a contract for \$558,000 which
21 you just approved, and that seems to be or could be done
22 by saying Integrated Waste Management Board will pay for
23 the following invoices A, B, C through X, whatever it is.

24 And the second contract, which you have not
25 approved, would be for other expenses which we have

1 incurred, and could include what the Board wanted to do
2 with SB 876 or any other funds.

3 And you have to approve, you haven't approved
4 that, but I would like to know whether it's a sense of
5 the Board to talk to your legal staff to put the contract
6 together as well.

7 BOARD MEMBER EATON: Well I would object to a
8 second contract since we haven't had any discussion or
9 legal opinions with regard to SB 876, we haven't even
10 gotten our five year plan approved. And if there are any
11 costs that come out of SB 876, as their statutory
12 language states, it must be for future work, and it must
13 have a scope of work and be identified as to what that
14 work happens to be.

15 And I don't have a problem going into those
16 discussions, but I think they're two separate contracts,
17 and I don't think we're in a position as the Board to do
18 that right at the present time.

19 Once the budget subcommittee hearings are over
20 and we kind of go through that, and you remember you were
21 in the room when those were discussed with all the
22 agencies as to the reason for the scope of work so that
23 everyone could account for the dollars. It wasn't to
24 point out to Toxics in particular that those funds are to
25 be expended for cross media activities, it was so

1 everybody would be accounted for and everyone knew what
2 those charges would be from all of the other agencies.

3 And I don't think we're anywhere near that. We
4 barely got through that today.

5 BOARD CHAIR MOULTON-PATTERSON: Mr. Jones.

6 BOARD MEMBER JONES: Just a quick question or
7 maybe a little direction. There are maybe three issues,
8 okay.

9 One is the 558.

10 One would be, as I see it, whatever contract
11 work we're going to do on, through SB 876 on the future
12 work at the site.

13 MR. LAWRY: Right.

14 BOARD MEMBER JONES: And I think maybe a
15 contract isn't the right word, but maybe it's an
16 acknowledgment of these bills.

17 And then the discussion about the money that the
18 Waste Board put in as a percentage of the total to do
19 Westley. The dollars that you have coming as the
20 percentage of what it took to deal with Westley and the
21 Water Board. Because as part of the discussions around
22 settlements and lawsuits at that site, there is going to
23 be a pool of money that needs to be dealt with, and it's
24 very serious money.

25 It's very clear that state agencies had to hire

1 contractors and deal with the biggest environmental, one
2 of the biggest environmental disasters to hit the west
3 coast. That may not be a contract, but it may be what we
4 need to acknowledge that these dollars are justified and
5 due. It just may be, the source of the payment may come
6 from those settlements. And I don't know if that works,
7 but --

8 MR. LAWRY: I don't know whether it works
9 either.

10 BOARD MEMBER JONES: But it gets you your
11 acknowledgment, and it gets us into the appropriate
12 discussions with those responsible parties.

13 MR. LAWRY: Right.

14 BOARD MEMBER JONES: So --

15 BOARD CHAIR MOULTON-PATTERSON: Senator Roberti.

16 BOARD MEMBER ROBERTI: I think Mr. Jones is
17 starting to get to the point of the confusion and I
18 appreciate it very much.

19 Just to rehash what I thought took place in
20 December is we had X number of dollars that Toxics wanted
21 to be, wish list, to be reimbursed for. We had available
22 to us X number of dollars. We arrived at \$558,000 after
23 massaging our own figures of other things we had to do,
24 and we came up with \$558,000.

25 Our vote in December was a percentage, 558,000,

1 of the then unspecified but known accumulated invoices of
2 the Department of Toxics. We have now appropriated that
3 money based on further discussion.

4 We do not have those invoices, that vote was not
5 invoice specific simply because the original vote was
6 never invoice specific. We were paying for a percentage
7 of what we could pay for based on the amount of money
8 that we had in pre-876 monies. That can't be invoice
9 specific.

10 The contract, as I understand it, and I think
11 that is similar to what Mr. Jones has been specifying, is
12 that we will come up with monies that are probably a
13 percentage of the invoices or may be invoice specific,
14 but all within the purview of what our original vote was,
15 and that is a percentage of all the obligations that
16 Toxics undertook in order to clean up Westley.

17 And so we do need some contractual language for
18 next month, but I do feel that the appropriation has been
19 made on a percentage basis simply based on the amount of
20 money we have, the amount of money that we suspect they
21 have.

22 BOARD CHAIR MOULTON-PATTERSON: Thank you,
23 Senator Roberti.

24 Do we have enough for staff?

25 INTERIM EXECUTIVE DIRECTOR BRUCE: We do. Thank

1 you. All right.

2 BOARD CHAIR MOULTON-PATTERSON: Thank you, Mr.

3 Lawry for coming down.

4 MR. LAWRY: Thank you.

5 (Thereupon the foregoing item was concluded.)

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CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

I, DORIS M. BAILEY, a Certified Shorthand Reporter and Registered Professional Reporter, in and for the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing excerpt of proceedings, Item number three, in shorthand writing; and thereafter caused my shorthand writing to be transcribed by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand as a Certified Shorthand Reporter and Registered Professional Reporter on the 26th day of March, 2001.

Doris M. Bailey, CSR, RPR, CRR
Certified Shorthand Reporter
License Number 8751